IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 341 OF2006

Rajesh Babanandan Shah
@ Damchya ....Petitioner.

v/s

The State of Maharashtra ....Respondent.

Mr. Pooja Bhojane for the petitioner.
Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 14th March 2006

P.C.:

1. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. The petitioner was arrested on 6th July 2005 in connection with C.R. No.I-64 of 2004 registered at Kopri Police Station for the offence punishable under sections 451, 364A, 384, 385, 386 read with section 34 of the Indian Penal Code read with sections 3 and 25 of the Arms Act.

3. The prosecution case in brief is that the complainant was threatened after he was abducted in a Car and he was directed to pay ransom amount of Rs 1 crore. However, after the complainant negotiated with the accused the said amount was reduced to Rs 7 lakhs which was paid by the complainant. According to the complainant, this incident took place on 3/3/2004 at about 9.00 a.m. Thereafter, in May 2004, he received

phone call and a demand was made of Rs 1 lakh. However, the complainant, according to the prosecution, agreed to pay an amount of Rs 25,000/-. He, thereafter, filed a complaint in the Police who organized a trap to apprehend the accused. After the accused came in a Santro Car, the complainant paid Rs 2000/- to one of the persons and they were promptly arrested by the police. It is alleged that the petitioner and one other accused who was waiting near the car on their motor cycle, escaped the clutches of the police. Initially, a charge-sheet was filed against the three other accused and, thereafter, a supplementary charge-sheet was filed against the present accused after he was arrested.

4. The other three accused have been released on bail. The learned Counsel for the applicant submitted that no recovery has been made at the instance of the present petitioner. The provisions of Section 364A of the I.P.C. are not attracted to the facts of the present case and, thirdly, it is submitted that since the other three accused have been released on bail the petitioner is also entitled to be released on bail.

5. The learned APP, on the other hand, vehemently opposed the grant of bail. He submitted that the

petitioner belongs to Chhota Rajan Gang and the petitioner and his associates have succeeded in their earlier attempt of extortion from the complainant. He submitted that the petitioner had other antecedents and the cases against him were pending. He submitted that he is likely to tamper with the evidence. He further submitted that other three accused were released on bail because the charge-sheet was not filed within a stipulated period and the bail was not granted on merits but on technical ground, as the Sessions Court had no other option but to release them on bail.

6. So far as the first incident which took place on 3/3/2004 is concerned, prima facie, there is no evidence except the testimony of the complainant. No complaint had been filed by him. So far as the second incident is concerned, admittedly, the petitioner was not apprehended at the spot. There is no recovery at the instance of the petitioner. Though the other three accused have been released on bail on technical ground, the fact remains that the main perpetrators of the crime were released on bail on account of the lapse of investigating agency. Merely because there are some other cases pending against the petitioner that could not be a ground to continue the custody of

the petitioner. In these circumstances, since the charge-sheet has been filed, the petitioner is entitled to be released on bail subject to stringent conditions being imposed.

7. The petitioner, therefore, be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. He shall not enter the jurisdiction of Kopri Police Station during the pendency of the trial. He shall supply his fresh address before his release to the Jail Superintendent and shall report to the nearest Police Station from his new address once in a week. If any attempt is made by the petitioner to threaten the witnesses, liberty is granted to the Public Prosecutor to apply for cancellation of bail.

8. It is made clear that the trial court shall not be influenced by any observation made by this Court in this Order while deciding the present application and it may not be construed to mean as an expression of opinion on the merits of the case and decide the case on its own merits and in accordance with law.

9. Application is accordingly disposed of.

V.M. KANADE, J.